

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

JACQUELYN QUINT,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil 96-71-B
	)	
A. E. STALEY MANUFACTURING	)	
COMPANY,	)	
	)	
Defendant	)	

ORDER AND MEMORANDUM

BRODY, J.

Before the Court is Defendant's Motion to Enforce Settlement. After holding an evidentiary hearing on this motion on December 10, 1999, and after reviewing the testimony of the witnesses, as well as the documents submitted by the parties, the Court finds that the parties reached a settlement agreement on August 9, 1999. For the reasons discussed below, Plaintiff's Demand for a Jury Trial is DENIED and Defendant's Motion to Enforce Settlement is GRANTED.

I. RIGHT TO A JURY TRIAL

As a preliminary matter, the Court addresses Plaintiff's demand for a jury trial on this matter pursuant to Rule 38(b). See Fed. R. Civ. P. 38(b). Plaintiff contends that whether there is a right to a jury trial on a motion to enforce settlement under the Seventh Amendment is a matter of first impression within this Circuit.<sup>1</sup>

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<sup>1</sup> Plaintiff urges this Court to rely on Millner v. Norfolk & Western Railway, 643 F.2d 1005 (4th Cir. 1981). The Court reads this case as adopting an "expansive reading[] of [the] jury trial right in FELA [*Federal Employers' Liability Act*, 45 U.S.C. § 51 *et seq.*] cases." Millner, 643 F.2d 1010 (emphasis added). Relying on Millner and the cases cited therein, the Eighth Circuit also has found a right to a jury trial in a FELA case where the defendant moved to enforce settlement. See Turner v. Burlington Northern Railroad Co., 771 F.2d 341, 343-44 (8<sup>th</sup> Cir. 1985) (explaining that "seventh amendment . . . does not bar Congress or the Supreme Court from expanding the right to jury trials" and finding that Congress and the Supreme Court have so done in the context of FELA). In addition to being FELA cases, both Turner and Millner can be distinguished from this case because in both

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Other courts that have faced this question have concluded that a motion to enforce a settlement agreement is an action seeking specific performance and, therefore, there is no right to a jury trial. See, e.g., Ford v. C & S Nat. Bank, 928 F.2d 1118, 1121-22 (11<sup>th</sup> Cir. 1991) (finding no right to a jury trial despite the fact that plaintiff argued against motion to enforce settlement on grounds of factual dispute as to formation of contract); Quijano v. Eagle Maintenance Services, Inc., 952 F.Supp. 1, 3 (D.D.C. 1997). This Court similarly finds that Defendant Staley has filed a motion seeking the remedy of specific enforcement. Therefore, the Plaintiff does not have a right to a jury trial under the Seventh Amendment.

## II. FINDINGS OF FACT

Because the parties dispute the existence of an agreement as well as the authority of Quint's attorney at the time, Mr. Stephen Roach, to enter into a settlement agreement, the Court took evidence from both sides to resolve the contested issues of fact. See Malave v. Carney Hospital, 170 F.3d 217, 220 (1st Cir. 1999) (explaining in the context of a motion to enforce settlement that "if there is a genuinely disputed question of material fact, . . . the court . . . must take evidence to resolve the contested issue of fact"). After assessing the credibility of all of the evidence admitted, the Court makes the following factual findings:

1. On the afternoon of August 9, 1999, the parties were engaged in settlement negotiations by phone. At the time of these phone conversations, Mr. Roach ("Roach"), who had represented Plaintiff since her appeal, was at Ms. Quint's home.
2. These settlement discussions grew out of a letter Roach sent to Mr. John McCarthy ("McCarthy"), Defendant Staley's attorney, on August 2, 1999, in which Plaintiff outlined a proposed settlement.

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<sup>1</sup>(...continued)

cases the defendants moved to enforce settlement before any trial was held on the merits. See Turner, 771 F.2d at 343; Millner, 643 F.2d at 1006-07. Thus, for the purposes of a jury trial, the defendant's claim that there was an enforceable settlement was viewed as a defense.

In this case, Plaintiff has already had a jury trial on the merits resulting in a favorable verdict that was upheld, in part, on appeal. See Quint v. A.E. Staley Manufacturing Co., 172 F.3d 1 (1st Cir. 1999). Additionally, her claims are not based on the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 et seq., Therefore, the Court is not persuaded by Millner and Turner in deciding whether Plaintiff is entitled to a jury trial on the pending motion.

3. Plaintiff, Ms. Quint ("Quint") authorized Roach to send the August 2nd letter. Quint also knew that, on the afternoon of August 9, 1999, Roach was discussing settlement with McCarthy by phone from her house.
4. Plaintiff and Defendant through their respective counsel, Roach and McCarthy, quickly agreed to settle Plaintiff's claims that had been upheld on appeal for a total of \$385,000, which included post-judgment interest. This figure was proposed by Plaintiff in the August 2nd letter.
5. McCarthy and Roach engaged in negotiations regarding the amount for which Quint would settle her remaining claims for reinstatement and front pay which were before Magistrate Judge Beaulieu on remand.
6. In the August 2nd letter, Plaintiff had offered to settle these remaining claims for \$200,000 plus two years of health benefits.
7. Staley initially counteroffered \$50,000, no health benefits and demanded a "no reapply" provision as part of any settlement on these remaining claims.
8. Ultimately, McCarthy told Roach that Staley would offer \$100,000 to settle Quint's claims for reinstatement and front pay, so long as Quint would agree never to reapply for a job with any Staley company.
9. Prior to Defendant's making this final \$100,000 offer, the parties already had agreed that attorney's fees and costs would be resolved separately, since the issue of attorney's fees had become a sticking point in prior settlement discussions. In fact, Plaintiff's August 2nd letter recognized that the parties would "resolve the statutory attorneys' fees and costs separately."
10. At this point, Defendant had dropped its demand for a confidentiality provision, which Roach previously had indicated his client would not accept.
11. Later that day, Roach placed a call to McCarthy and indicated that Quint would accept Defendant's offer of \$100,000 to settle the reinstatement and front pay claims.
12. In an abundance of caution, McCarthy attempted to reconfirm that they had a final settlement for a total of \$485,000 and that Quint would not attempt to back out.

13. At this point, McCarthy heard Roach put down the phone and communicate to Quint McCarthy's request for reassurance that the agreement was final. McCarthy heard Quint respond affirmatively.
14. With this reconfirmation, the parties reached an oral agreement that they then agreed to memorialize the next day.
15. After reaching an agreement on the terms of the settlement, Roach indicated that he had some tax language he wanted included in the agreement that he was going to fax to Mr. McCarthy. McCarthy received the two page fax on August 9, 1999.
16. Plaintiff had not raised tax treatment of the settlement monies prior to this point in the August 9th negotiations. Additionally, Plaintiff did not discuss taxes in her August 2nd letter which served as the starting point of the August 9th negotiations. Rather, Plaintiff raised the taxability issue as an afterthought.
17. Staley was prepared to incorporate into the agreement any tax language desired by the Plaintiff that did not require Defendant's attorneys to lie.
18. On the morning of August 10, 1999, before receiving any response from the Defendant regarding the suggested tax language, Roach placed a call to McCarthy informing him that Ms. Quint no longer wished to settle the case on the terms they had agreed to the day before.

### III. CONCLUSIONS OF LAW

#### A. Lack of Authority

Plaintiffs have asserted that Roach lacked the actual authority to settle the case on August 9, 1999. As evidence, they cite letters Quint had sent to Roach back in May and June 1999. The Court need not determine what effect, if any, these letters had on Roach's authority because, by her own words on August 9<sup>th</sup>, Quint either gave Roach the actual authority to settle the case or approved the settlement herself. In short, what occurred on August 9, 1999, between McCarthy and Roach constituted a settlement agreement that was audibly approved by Plaintiff. See Malave, 170 F.3d at 220 (explaining that "decision to settle litigation belongs to the client, not the lawyer") (citations omitted).

#### B. Mutual Assent

This Court may require specific enforcement of an oral agreement because “[a]n oral contract to settle a claim . . . may be enforced as any other contract.” O’Rourke v. Jason Inc., 978 F.Supp. 41 (D. Mass. 1997) (citations omitted). Thus, the Court can find that Plaintiff and Defendant actually entered into a contract during their August 9<sup>th</sup> phone conversation, which they agreed to memorialize in writing the next day. See Restatement 2d § 27.

The fact that Quint changed her mind on the morning of August 10th before seeing the agreement in writing does not change the fact that there was a meeting of the minds on this agreement on August 9<sup>th</sup>. The terms of this agreement were reasonably certain: Quint would receive \$485,000 in exchange for releasing all of her claims, with the exception of worker’s compensation claims, and agreeing to not reapply for any job at Staley; attorney’s fees would be negotiated separately; and the agreement would not be confidential. See Restatement 2d § 33.

One collateral issue remained: how the agreement would characterize for tax purposes some portion of the \$485,000 Staley would pay Quint under the terms of the settlement.<sup>2</sup> Defendant's position on this issue was that they would include any tax language desired by Plaintiff as long as Defendant's attorneys were not required to lie. The fact that the exact language that fit within these parameters had not yet been worked out does not prevent the Court from finding there was a binding agreement. While the Court realizes that the tax treatment of

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<sup>2</sup> Plaintiff argues that the uncertain resolution of this taxability issue prevents the Court from finding a contract not only because it was unclear whether Staley would accept the language suggested by Plaintiff but also because the parties had not reached an agreement as to how much money would be labeled as compensation for personal physical injuries and, therefore, not taxable. Plaintiff, through her attorney, argued at the hearing that she was potentially seeking to have all \$485,000 characterized in the settlement agreement as compensation for personal injuries, although \$385,000 of the settlement represented money due to Plaintiff under the judgment entered by the First Circuit on March 15, 1999, plus post-judgment interest on those claims.

The issue of what, if any, monies received by Quint in connection with this case may be excluded from her gross income under 26 U.S.C. § 104(a)(2) is not properly before this Court. Consequently, the Court states no opinion on this substantive issue. However, the Court calls the parties attention to the First Circuit's decision in Rozpad v. Commissioner, 154 F.3d 1 (1st Cir. 1998). In Rozpad, the First Circuit clearly found that the Commissioner "had the right--indeed, the duty--to look beyond the language subscribed by the parties" to determine the taxability of a settlement. Rozpad, 154 F.3d at 4 (internal quotations omitted). Thus, no matter what language or amount the parties could agree to claim was compensation for Quint's personal physical injuries in their written memorial of the settlement, it is ultimately the Commissioner, not the parties, who decides what part of a settlement is, in fact, excludable under section 104(a)(2).

the settlement monies could drastically effect the net value of Quint's settlement, the Court finds that taxability was not a term of the settlement that Quint, through her attorney, pressed during negotiations. Instead, taxability was simply something that caused Quint to have second thoughts after reaching a settlement agreement. Given this posture by Quint and Staley's apparent willingness to assist Quint in characterizing the settlement monies in any legal manner, this term was not the subject of controversy and the Court believes the parties will be able to insert mutually agreeable tax language into their written memorial containing the terms this Court finds the parties agreed to on August 9, 1999.

#### IV. CONCLUSION

In accordance with these findings, the Court hereby ORDERS that, within five business days:

1. Plaintiff Jacquelyn Quint execute a general release of her claims against Staley, except for her workers' compensation claims and claims for attorney's fees, expenses, and costs in this case, in a form reasonably satisfactory to both Staley and Quint, such a release shall include a promise by Quint never to reapply for employment with any Staley company;
2. Staley deliver to the Court a check in the amount of \$485,000 for deposit with the Court in accordance with Federal Rule of Civil Procedure 67; and
3. In accordance with Local Rule 67, Staley deliver a proposed order to the Clerk that the \$485,000 be deposited in an interest bearing account.

Upon Quint's execution of the above described release and Staley's deposit with the Court of the above described money, the Court will enter an order dismissing all claims with prejudice except for Quint's claims for attorney's fees expenses and costs.

SO ORDERED.

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MORTON A. BRODY  
United States District Judge

Dated this 23rd day of December, 1999.